

CENTER FOR DISABILITY ACCESS
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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

Brian Whitaker,
Plaintiff,

v.

**Robert Forrest Clarke;
Diane Epping**
Defendants

Case No. 3:21-cv-07414-EMC

**Joint Case Management
Statement**

Date: April 26, 2022
Time: 1:30p.m.
Videoconference Only

Honorable Judge Edward M. Chen

The parties submit this Joint Case Management Statement pursuant to the Standing Order for All Judges of the Northern District of California dated November 1, 2018 and Civil Local Rule 16-9.

1 **1. Jurisdiction & Service**

2 This Court has subject matter jurisdiction over this action pursuant
3 to 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the
4 Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

5 This court has supplemental jurisdiction over the claims brought
6 under the Unruh Act pursuant to 28 U.S.C. § 1367(a) as the claims arise
7 from the same incident.

8 Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
9 founded on the fact that the real property which is the subject of this action
10 is located in this district and that Plaintiff's cause of action arose in this
11 district.

12 Complaint was served on Defendants on or about October 31, 2021.

13
14 **2. Facts:**

15 Plaintiff: Brian Whitaker suffers from a C-4 spinal cord injury. He is
16 a quadriplegic. He uses a wheelchair for mobility. Defendants Robert
17 Forrest Clarke and Diane Epping own ZamZam located at or 1633 Haight
18 Street, San Francisco, California.

19 On the date of the plaintiff's visit, the defendants failed to provide
20 wheelchair accessible outside tables in conformance with the ADA
21 Standards as it relates to wheelchair users like the plaintiff. The outside
22 tables did not provide sufficient toe and knee clearance for wheelchair
23 users.

24 Defendant's failure to provide for wheelchair accessible outside
25 tables at ZamZam is a violation of the ADA and is discriminatory against
26 the plaintiff. Defendant violates plaintiff's rights under the American with
27 Disabilities Act and the Unruh Civil Rights Act. Plaintiff seeks injunctive
28 relief and the statutory minimum damage award.

1 Defendants: Defendants dispute plaintiffs allegations that they did
2 not provide sufficient tow and knee clearance at the time and place alleged.

3 4 **3. Legal Issues**

5 The disputed legal issues are: (1) Whether the defendant's property
6 meets the minimum standards of the ADA; state disability laws and other
7 codes; (2) whether the defendants are responsible under the law to remove
8 barriers; (3) whether the barriers are readily achievable to remove; (4)
9 whether the plaintiff has standing to seek either damages or injunctive
10 relief; and (5) the nature and extent of damages, if any.

11 Defendants contend that their property meets minimal ADA
12 standards and other relevant codes.

13 14 **4. Motions**

15 Plaintiff: anticipates filing a motion for partial summary judgment
16 on the issue of duty and liability under the ADA and the Unruh Civil Rights
17 Act. This will happen after the necessary depositions are taken in this case.

18 Defendants: Defendants will take depositions of witnesses and the
19 plaintiff.

20 21 **5. Amendment of Pleadings**

22 Plaintiff: Plaintiff intends to conduct an expert led site inspection to
23 identify each barrier that would affect his type of disability and, then,
24 amend the complaint to ensure that the ADA claim reflects his intention to
25 have all unlawful barrier removed or remediated. This is the two-step
26 process permitted and required by *Doran v. 7-Eleven Inc.*, (9th Cir. 2008)
27
28

1 524 F.3d 1034 and *Chapman v. Pier 1 Imports* (US) Inc., 631 F.3d 939 (9th
2 Cir. 2011).

3 Defendants: Defendants intend to produce expert evidence to
4 establish compliance.

5
6 **6. Evidence Preservation**

7 The Parties agree to make efforts to preserve all discoverable
8 information, regardless of the format in which it is kept (email, database,
9 paper file, etc.).

10 The parties are unaware of any issues in this regard at this time.

11
12 **7. Disclosure**

13 The Parties do not seek any changes to the form or requirements for
14 initial disclosures. Plaintiff has served initial disclosures on or about
15 February 16, 2022. Defendant anticipates that Initial Disclosure shall be
16 served by April 27, 2022.

17
18
19 **8. Rule 26 Discovery Plan**

20 **1. Discovery Subjects**

21 Plaintiff intends to seek discovery related to: (1) the ownership
22 and operation of the business; (2) lack of wheelchair accessible
23 outside tables at ZamZam; (3) changes or modifications to the
24 property; (4) the feasibility of providing access to persons with
25 disabilities. Plaintiff intends to propound a set of Interrogatories,
26 Requests for Admission and Requests for Production of Documents;
27 to take the deposition of Defendant and to conduct an expert site
28 inspection.

1 Defendants: Discovery will focus on the continued operation of
 2 the premises since 1939, in compliance with the rules and
 3 regulations governing the continuous operations of businesses such
 4 as defendants.

5
 6 The Parties do not propose to conduct discovery in phases. The
 7 parties agree to electronic service in this matter. Documents sent to
 8 the appropriate e-mail addresses for the respective parties below
 9 shall be deemed served the day it is received by e-mail if received
 10 before 5:00 PM PST, or the following weekday if served after. The
 11 parties agree that service under this agreement shall be entitled to
 12 the benefits of FRCP 6(d). Either party may modify their service list
 13 by providing notice to the below listed service addresses with the
 14 new e-mail addresses to be served.

15 Plaintiff: serve@potterhandy.com & Zacharyb@potterhandy.com

16 Defendants:

17
 18 2. Changes in Limitations on Discovery

19 The parties request no deviation from the Federal and Local Rules.

20
 21 **9. Class Actions**

22 N/A.

23
 24 **10. Related Cases**

25 The Parties are unaware of any related cases.

26
 27 //
 28 //

1 **11. Relief**

2 Plaintiff: claims injunctive relief, attorney fees and damages under
3 the Unruh Civil Rights Act, which provides for actual damages and a
4 statutory minimum of \$4,000.

5 Defendants: Defendants contend that injunctive relief will not lie.
6

7 **12. Settlement and ADR**

8 Plaintiff: The parties completed a site inspection on February 22,
9 2022. The parties are conferring on settlement and anticipate filing a
10 Notice of Need for Mediation shortly if an agreement is not reached.

11 Defendants: Defendants intend to mediate.
12

13 **13. Consent to Magistrate Judge for All Purposes**

14 Plaintiff: does not consent to have a Magistrate Judge preside over
15 this case.

16 Defendants: Defendants would accept a Magistrate Judge.
17

18 **14. Other References**

19 None
20

21 **15. Narrowing of issues**

22 None
23

24 **16. Expedited Trial Procedure**

25 The parties do not believe that this case is suitable for an expedited
26 schedule.
27
28

1 **17. Scheduling**

2 Plaintiff proposes:

3 The date for Disclosures of Expert Witness as January 30, 2023

4 Discovery Cut-Off of March 13, 2023

5 Law and Motion Cut-Off of April 10, 2023

6 Pre-trial Conference date of May 22, 2023

7 Trial date of June 6, 2023

8 Defendants propose:

9 Disclosure commencing October 2022.

10
11 **18. Trial**

12 Plaintiff: has requested a Court trial and anticipates a 2-3 day trial.

13 Defendants:

14
15 **19. Disclosure of Non-Party Interested Entities or Person**

16 Plaintiff: There are no interested parties other than the Plaintiff.

17 Defendants:

18
19 **20. Professional Conduct**

20 Counsel have reviewed the Guidelines for Professional Conduct for
21 the Northern District of California.

22
23 **21. Other Matters**

24 None

1 Dated: April 19, 2022

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5 By: /s/Prathima Price
Prathima Price
6 Attorney for Plaintiff
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8 Dated: April 19, 2022

LAW OFFICES OF MARC LIBARLE

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12 By: /s/Marc Libarle
13 Marc Libarle
14 Attorney for Defendants
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SIGNATURE ATTESTATION

I hereby attest that all other signatories listed, and on whose behalf the filing is submitted, concur in this document's content and have authorized the filing of this document with the use of their electronic signature.

Dated: April 19, 2022

CENTER FOR DISABILITY ACCESS

By: /s/Prathima Price
Prathima Price
Attorney for Plaintiff

EXHIBIT A

PROPOSED SCHEDULE OF PRETRIAL & TRIAL DATES

Matter	Weeks Before Trial	Parties Request
Last Day for Hearing on Motion to Add Parties and Amend Pleadings (Monday at 10:00 a.m.)	25	12/12/2022
Non-Expert Discovery Cut-Off	15	2/20/2023
Expert Discovery Cut-Off	12	3/13/2023
Last Day to Conduct Settlement Proceedings	10	3/27/2023
Last Day for Law and Motion Hearings	8	4/10/2023
Final Pretrial Conference (Monday at 1:30 p.m.)	2	5/22/2023
Last Day for Filing Proposed Findings of Facts and Conclusions of Law (if court trial)	1	5/29/2023
Exhibit Conference (Friday at 3:00 p.m.)	Friday before Trial	6/2/2023
Trial (Tuesday at 9:00 a.m.)		6/6/2023